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SUPREME COURT OF THE UNITED STATES

January Term 1991

No.: 90-1215

ILSE HEINEMEYER, Executrix of the Estate of Frank Grund,

Petitioner,

vs.

JOSEPH P. O'DONNELL,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI

On The Brief:

Seymour E. Siegel, Esq.

Dated: March 27, 1991

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II. List of Parties

Ilse Heinemeyer, Executrix of the Estate of Frank Grund, deceased,

Petitioner,

v.

Joseph P. O'Donnell, Esq., a Member of the Bar of the State of New Jersey,

Respondent.

Opinions as Below

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PROCEDURAL HISTORY

The underlying legal malpractice case was tried for approximately seven days. The jury being charged and presented with the sole issue of defendant's professional negligence returned a verdict of "no cause of action." On July 6, 1989, the trial judge, the Honorable A. Donald McKenzie, entered an Order dismissing the case, with prejudice. It should be noted that the Estate of Frank Grund was represented at trial by Wayne Augustine, Esquire, a member of the Bar of the State of New Jersey.

Thereafter, the Petitioner herein, Ilse Heinemeyer, Executrix of the Estate of Frank Grund, made two pro se applications for post judgment relief and/or a new trial, each of which were denied.

On November 13, 1988, Mrs. Heinemeyer, pro se, filed a Motion with the Superior Court of New Jersey, Appellate Division, "For Leave To File Notice of Appeal and/or For Further Relief." This Motion was denied and the Appeal dismissed as untimely by the Court's Order of January 25, 1990. Thereafter on February 8, 1990, the Petitioner, again pro se, filed a Motion for Reconsideration which was denied on March 1, 1990.

On July 1, 1990, Mrs. Heinemeyer, again attempting to proceed pro se, filed a Petition for Certification before the New Jersey Supreme Court, which was denied on July 10, 1990.

A Motion for Reconsideration filed November 1, 1990 was denied by Order dated October 30, 1990.

On or about January 28, 1990, Petitioner filed her Petition for Writ of

Certiorari to the Supreme Court of the United States.

JURISDICTION

DOES THIS COURT HAVE JURISDICTION TO HEAR THIS PETITION?

The jurisdiction of the Supreme Court to review decisions of the State Courts is codified in 28 U.S.C. § 1257, which reads as follows:

"Final judgments or decrees rendered by the highest court of a State in whch a decision could be had, may be reviewed by the Supreme Court as follows:

"(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or

statutes of, or commission held or authority exercised under, the United States."

All of the issues raised by Petitioner are ones of state law thus as Justice Brennan stated, such judgments "... not only cannot be overturned by, [but] indeed are not even reviewable by, the Supreme Court of the United States." Justice Brennan, State Constitutions And The Protection of Individual Rights. 90 Harv. L. Rev. 489, 501 (1977).

Petitioner raises issues with reference to Lieberman v. Employers Insurance of Wausau 171 NJ Super. 39, (App. Div. 1979); the order in which the various issues were presented to the jury; the propriety of video tape testimony (specifically sanctioned by N.J. Ct. Rule 4:14-8(e); the jury charge with reference to plaintiff's comparative negligence (of which none was found); the

alleged prejudice of Chief Justice Robert N. Wilentz, in denying the appeals from the case Sub Judice as well as the prior ethics complaint (for which there is not a scintilla of evidence) and whether the "Court violated Ilse Heinemeyer's 'right' to appear pro se in a legal malpractice case on behalf of an Estate."

All these alleged questions turn on issues of state law and the various rulings of both the Trial Court and Appellate Courts below are well supported in New Jersey case law. Moreover, the rulings of the Trial Court and Appellate Courts below did not involve any issues of Federal law and/or treaties and certainly none were held invalid. Likewise, in this straightforward professional negligence case, there was no issue raised below upholding the validity of any state statute in the face of a

claimed repugnancy to a Federal Statute Treaty or Constitutional provision. Thus, to be succinct, this Court has no jurisdiction pursuant to 28 USC §1257 to grant this application.

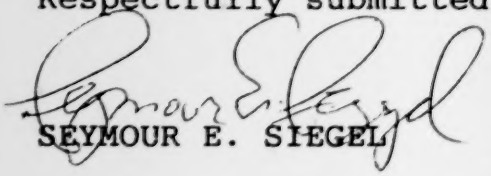
STANDING

DOES THE PETITIONER HAVE STANDING TO PROCEED WITH THIS PETITION AS SHE IS NOT ADMITTED TO ANY BAR AND IS REPRESENTING AN ESTATE OF WHICH SHE IS NOT THE SOLE BENEFICIARY?

Petitioner had no "right" to represent her late father's Estate of which she is not the only beneficiary. In fact, N.J.S.A. 2A:170-78 renders the unauthorized practice of law a disorderly persons offense. Thus, in Kashariah v. Wilentz, 93 NJ Super. 479 (App. Div. 1967) the Court held that an adminis trator ad prosequendum who was a lay person could not maintain a wrongful death action. Mrs. Heinemeyer and her sister are joint beneficiaries of their late father's estate (Heinemeyer dep. p. 6, l. 5-20). The court's analysis attempting to protect the non-litigating beneficiary from the errors of the pro se representative is particularly apt here.

It should be very clear to the court that during the trial of this case the Estate of Frank Grund was represented by counsel. However, all subsequent Appellate activity has allegedly been performed on behalf of the Estate by Mrs. Heinemeyer. To date, she has violated the very strict New Jersey Appellate Court time rules resulting in the dismissal of the appeal as untimely filed. She has also managed to incur Orders for costs at the expense of the Estate at the Trial and Appellate Court levels. For these reasons, it is abundently clear that Petitioner has no standing to bring this Application and it should be denied.

Respectfully submitted,



SEYMOUR E. SIEGEL